

**STATE OF CALIFORNIA – DEPARTMENT OF INSURANCE
AMENDMENT TO TITLE 10, CHAPTER 5, SUBCHAPTER 9
CALIFORNIA CODE OF REGULATIONS
TO ADD**

ARTICLE 1 Life and Annuity Consumer Protection Program

TEXT OF REGULATIONS

Article 1. Life and Annuity Consumer Protection Program

§2698.23 Authority and Purpose

These regulations are promulgated pursuant to authority granted to the Insurance Commissioner under the provisions of California Insurance Code section 10127.17 to implement the distribution of money dedicated to protecting consumers of life insurance and annuity policies in this State. The purpose of these regulations is to set forth: a) the method of assessing the fee on life insurance policies and annuity contracts; b) the grant application process and subsequent reporting requirements; and c) the intended and allowable use of funds to be distributed to district attorneys for enhanced investigation and prosecution of life insurance and annuity financial abuse cases, and to the Department for the additional purpose of consumer protection.

NOTE: Authority cited: Section 10127.17, California Insurance Code. Reference: Section 10127.17, California Insurance Code.

§2698.23.1. Definitions

For the purposes of these regulations, the following definitions apply:

- (a) "Application for Grant Funding (Application)" means the completed written document submitted to the Department by a local district attorney or district attorney's office requesting funds for the purposes stated in these regulations and the Request for Applications.
- (b) "Assessment" means the fee collected from life insurers to support the Life and Annuity Consumer Protection Program to enhance investigation and prosecution of life insurance and annuity financial abuse cases. All life insurers admitted to transact insurance in California are subject to the assessment and to these regulations.
- (c) "Commissioner" means the California Insurance Commissioner.
- (d) "Department" means the California Department of Insurance.
- (e) "Grant Award Agreement (Agreement)" means the written agreement between the Department and the local district attorney to award funds under section 10127.17.
- (f) "Grant Funding Cycle" means the period of time designated for a grant cycle as determined by the Commissioner.
- (g) "Grantee" means a grant-funded district attorney or district attorney's office.

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- (h) "Life and Annuity Consumer Protection Program (LACPP)" means the program funded and administered by the Department for the enhanced investigation and prosecution of life insurance and annuity financial abuse cases including grants to district attorneys, Department investigations and consumer protection and education.
- (i) "Life insurance and annuity financial abuse" means, among other things, the sale or attempted sale of any product, including a life insurance policy or an annuity product through misrepresentation as to the benefits, terms or conditions of the policy or product, to a person who will not benefit as represented from the sale because of the cost of twisting or churning, or the unsuitability of the product for the needs and status of the targeted buyer. A violation of any of the following code sections, including but not limited to, Insurance Code section 780, 781, 785, 786, 787 and/or Penal Code section 368, 470, 487, 15610.30 shall constitute "life insurance and annuity financial abuse" for the purposes of these regulations.
- (j) "Program" means those activities conducted by the Grantee that are directed toward the enhanced investigation and prosecution of life insurance and annuity financial abuse and are funded through the Department's Life and Annuity Consumer Protection Program authorized by Insurance Code section 10127.17.
- (k) "Program Report and Expenditure Report" means the final reports required to be submitted to the Commissioner at the end of the Grant Funding Cycle or at the end of each grant year, if a multi-year grant.
- (l) "Regulations" means these regulations, California Code of Regulations Title 10, Chapter 5, Subchapter 9, Article 1, section 2698.23 through section 2698.27 and any subsequent revisions.
- (m) "Request for Applications (RFA)" means the document developed by the Department to solicit applications from District Attorneys for grant awards.

NOTE: Authority cited: Section 10127.17, California Insurance Code. Reference: Section 10127.17, California Insurance Code.

§2698.24. Assessment, Reporting & Penalties

- (a) A \$1.00 fee shall be assessed annually on all new individual life insurance policies and individual annuity contracts with an initial and/or intended face amount of \$15,000 or more beginning January 1, 2005. A life insurance policy or annuity contract that is funded by proceeds from the surrender of an existing life insurance policy or annuity contract is deemed a new issue subject to the fee.

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- (b) The total annual assessment shall be based upon data provided by the insurer to the Commissioner. The data shall be submitted to the Commissioner semi-annually by January 10th and July 10th, or as determined by the Commissioner. The data shall include at a minimum the following:
- (1) The total number of new individual life insurance policies with a face amount of \$15,000 or more;
 - (2) The total number of new individual annuity contracts with a face amount of \$15,000 or more;
 - (3) Information needed to verify the data, including but not limited to, individual life insurance policy numbers and individual annuity contract numbers;
 - (4) A certification by an Officer of the insurer, or his or her designee, under penalty of perjury under the laws of the State of California, that the number of life insurance policies and annuity contracts reported therein is accurate; and,
 - (5) The current contact information, including electronic address, for the person most knowledgeable about the life and annuity data reported to the Commissioner by the insurer.
- (c) The required data and the contact information shall be submitted to the Department's Coordinator for the Life and Annuity Consumer Protection Program (LACPP) in the format requested. Life insurers shall maintain the data collected for the LACPP for five years and shall make the data available for audit by the Commissioner upon request.
- (d) Late reporting of required data and late payment of invoices by insurers shall be subject to all penalties, late fees and fines authorized by this Code including but not limited to the actual cost of field audits and reviews.

NOTE: Authority cited: Sections 10127.17, 10508.6, 10508.7, 12921.6, 12995, California Insurance Code. Reference: Section 10127.17, 10508.6, 10508.7, 12921.6, 12995, California Insurance Code.

§2698.24.1. Annuity Valuation

- (a) In valuing an annuity, all guarantees are to be considered, including, for example, guaranteed minimum accumulation benefits and guaranteed minimum withdrawal benefits. If an annuity contract provides for optional maturity dates (the maturity date is the date annuity payments are scheduled to begin), the date to be used to calculate the maximum account and annuitization values shall be the later of the contract anniversary following the annuitant's 70th birthday, or the end of the tenth year after the date of issuance of the annuity.

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- (b) If a deferred annuity has a guaranteed minimum income benefit, the amount to be used in the determination of the annuity value is the greater of the commuted value of the guaranteed income benefit, using valuation interest and mortality, the account value, if any, or the annuitization value, if any.
- (c) For the purposes of this Article, insurers shall use the following criteria in determining the value of an annuity:
 - (1) For single premium immediate annuities, use the gross contribution.
 - (2) For single premium deferred annuities, use the greater of the initial gross contribution, or the account value (or the annuitization value if greater than the account value) to determine annuity payments at the maturity date based on the guarantees in the contract.
 - (3) For fixed premium deferred annuities, use the greater of the sum of all monthly or other required gross contributions payable through the maturity date specified in the annuity, or the maximum account value (or the annuitization value if greater than the account value) to determine annuity payments at the maturity date based on the guarantees in the contract.
 - (4) For flexible premium deferred annuities, use the greater of the sum of the initial gross contribution and all other required or permitted gross contributions payable through the maturity date specified in the annuity, or the account value (or the annuitization value if greater than the account value) to determine annuity payments at the maturity date based on the guarantees in the contract and the assumption that all permitted contributions would be made.
 - (5) For an annuity that does not readily fit into one of the forms specified above, insurers shall use a procedure consistent with the above methods.

NOTE: Authority cited: Section 10127.17, California Insurance Code. Reference: Sections 10127.17 and 12995, California Insurance Code.

§2698.25. Allocation of Funds

- (a) The grant shall be funded pursuant to a Grant Award Agreement. However, funding and dates of distribution shall be contingent upon the adoption of an annual state budget and the collection of assessments. No grant funds shall be released without an executed Board of Supervisors resolution on file with the Department authorizing the acceptance of the Grant Award Agreement.

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- (b) Fifty percent (50%) of the funds collected shall be distributed within the Department for consumer protection activities related to individual life insurance and annuity products, including, but not limited to investigating and prosecuting financial abuse by insurance licensees, or persons holding themselves out to be insurance licensees, or any person purporting to be engaged in the business of insurance; responding to consumer inquiries and complaints related to life insurance or annuity products; educating consumers in all aspects of life insurance and annuity products, consumer protection, purchasing and using insurance and annuity products, claim filing, benefit delivery, and dispute resolution; and, regulating and overseeing life insurance and annuity products and advertising for these products directed towards consumers.
- (c) Fifty percent (50%) of the funds collected shall be distributed to California district attorneys for investigating and prosecuting individual life insurance and annuity product financial abuse cases involving insurance licensees, or person holding themselves out to be insurance licensees, or any person purporting to be engaged in the business of insurance, and for other projects beneficial to insurance consumers.

NOTE: Authority cited: Section 10127.17, California Insurance Code. Reference: Section 10127.17, California Insurance Code.

§2698.25.1. Criteria for Award of Grants

- (a) The Commissioner shall distribute funds under the Life and Annuity Consumer Protection Program (LACPP) to one or more district attorneys who submit an application meeting the requirements of the RFA.
- (b) In selecting applications for funding, the Commissioner shall consider the information provided in the application as well as recommendations from the Department. Applications shall be evaluated using the following criteria:
 - (1) The impact the funding is likely to have on the reduction and/or elimination of life insurance and/or annuity financial abuse in the Grantee's jurisdiction;
 - (2) The likelihood that the project funded by the grant will result in criminal prosecution and/or conviction of a life insurance licensee, or person holding themselves out to be insurance licensees, or any person purporting to be engaged in the business of insurance;
 - (3) Whether or not the applicant's jurisdiction has existing activities or projects to reduce/eliminate life/annuity fraud; and,

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- (4) The extent to which the application proposes to use the grant funds to focus on the Grant Funding Cycle priorities, as determined by the Commissioner and as set forth in the RFA.
- (c) Life and Annuity Consumer Protection Program (LACPP) funds must be used to support enhanced investigation, prosecution and elimination of life insurance and annuity financial abuse or other projects beneficial to insurance consumers in the specified county and shall not supplant funds that the county otherwise would make available for any aspect of the program described in the Application.

NOTE: Authority cited: Section 10127.17, California Insurance Code. Reference: Section 10127.17, California Insurance Code.

§2698.25.2. Application Procedure & Requirements

- (a) The Request for Applications (RFA) shall be distributed annually or as determined by the Commissioner to each county district attorney in the state. Applications received after the date set for submission shall not be considered for funding. The RFA shall set forth the specific requirements for the completion of an application, the total amount of funding available for each Grant Funding Cycle, the length of the Grant Funding Cycle, and the Commissioner's priorities for use of funds during that grant cycle.
- (b) An Application for Grant Funding shall contain all of the information detailed in the RFA including the amount of funding requested. Applications missing any of these required elements shall not be considered for funding. Applications shall include:
- (1) "Proposal Narrative" includes, but is not limited to, the proposed use of the money and the anticipated outcome, a list of prior relevant cases or projects, and, a copy of the final accounting for each case or project except in the case of ongoing cases or project, the most recent accounting shall be provided;
 - (2) "Budget Proposal" includes but is not limited to, a detailed budget, including salaries, general expenses, the cost of purchase or rental of equipment or supplies;
 - (3) "Executed Board of Supervisors Resolution", and,
 - (4) Any other documentation required in the RFA.
- (c) A joint application addressing a multi-county area may be submitted. Joint applications and accompanying documents as provided in subsection (b) shall address the use of funds by and between each participating county and designate a lead county for the purpose of receipt and distribution of the grant funding and to serve as the responsible entity for the administration of the grant.

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- (d) The Application for Grant Funding, Grant Award Agreement and all reports submitted to the Department shall be public documents. However, information regarding ongoing criminal investigations, whether active or inactive, shall be confidential.

NOTE: Authority cited: Section 10127.17, California Insurance Code. Reference: Section 10127.17, California Insurance Code.

§2698.25.3. District Attorney Reporting

- (a) Each Grantee shall submit a Program Report to the Department no later than thirty (30) days after the end of the first year of the Grant Funding Cycle. The Program Report shall include a narrative description of the funded activities, how those activities have helped reduce the number and/or severity of life insurance and annuity financial abuse cases in the county, a summary of key cases investigated/prosecuted during the Grant Funding Cycle and other relevant information and statistical data. This information may be provided without any victim/defendant specific identifying information.
- (b) Each Grantee shall submit an Expenditure Report to the Department no later than sixty (60) days after the close of the first year of the Grant Funding Cycle. It shall include information on personnel salaries and benefits, operating cost breakdown, equipment, and an explanation of any material variances from the Grantee's proposed budget. A Grantee may request an extension of time for the submission of the final Expenditure Report in the event an organization-wide audit will delay the submission of the report.
- (c) Grantees awarded multi-year grants or grants subject to renewal shall submit the Program Report and the Expenditure Report specified in subsections (a) and (b) above to the Department by May 15th of the grant year. A letter requesting renewal of the Grant Award Agreement shall be submitted to the Department with the above designated reports and another executed Board of Supervisors Resolution for the second year grant amount. Failure to submit the Program and Expenditure reports in a timely manner, as required, shall affect subsequent funding and/or renewal decisions.

§2698.26. Unexpended Funds and Grant Liquidation

- (a) Within sixty (60) days after the end of each Grant Funding Cycle, a Grantee shall provide the Department with an estimate of any unexpended and/or unencumbered funds. A Grantee who has undertaken investigations and prosecutions that will carry-over into a subsequent funding cycle may petition the Commissioner in writing to carry funds over into a subsequent grant year. After a written request justifying the carry-over is approved by the Commissioner, Grantee may carry-over distributed but unused funds into the subsequent funding cycle.

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- (b) There shall be a grant liquidation period of ninety (90) days following the end of the Grant Funding Cycle. Costs incurred but not paid may be paid and deducted from the program budget and all remaining unexpended monies shall be returned to the Department.

§2698.27 Commissioner Authority

- (a) The Commissioner may provide technical assistance to the Grantee and monitor performance of the Grant Award Agreement through the Program and Expenditure Reports, site visits and/or other means. The Commissioner shall inform the Grantee in writing if performance by Grantee is not satisfactory and may, at his or her discretion, suspend any payment and/or performance under the Agreement. The Commissioner may redistribute those funds to other eligible Grantees. The Grantee shall return any unused funds to the Department within thirty (30) day of the request from the Department.
- (b) The Commissioner has the right during normal business hours, to examine, reproduce, monitor and audit accounting documents, and all other records related to the performance of their Agreement by the Grantee. Grantee shall maintain and make available all records related to this Agreement. Records must be retained within the control of the Grantee and available for review at the Grantee's place of business. This right will terminate no sooner than four (4) years from the date of termination of the Agreement or three (3) years from the date of the last funds disbursement by the Department to the Grantee.
- (c) The Commissioner may audit the Agreement at any time up to four (4) years following the end of the term of the Agreement. Audits will be performed according to Government Auditing Standards including sampling of available records. If the Commissioner determines that a Grantee shall be audited pursuant to Insurance Code section 10127.17(d)(5), the Grantee shall be so notified by the Department. Grantees chosen for audit shall cooperate fully with Department auditors.
- (d) The Commissioner may terminate the Agreement for cause with at least thirty (30) days written notice to Grantee, except, if the Commissioner has evidence of fraud, the Agreement may be terminated immediately. The Grantee may terminate the Agreement at will upon written notice to the Commissioner and the return of unexpended funds to the Department within thirty (30) days of the termination date.